Zainal Abidin bin Yaakub v Pentadbir Tanah Daerah Melaka Tengah

HIGH COURT (MELAKA) — ORIGINATING SUMMONS NO 24–94–1996
AUGUSTINE PAUL JC
23 SEPTEMBER 1996

Land Law *— Acquisition of land — Reference to court — Objection to award made by collector — Enlargement of time to object to award made by collector — Conditions to be satisfied before landowner entitled to make objection — Whether landowner entitled to enlargement of time to object to award when he had not made objection before accepting the award — Land Acquisition Act ss 30(b) & 37*

Land Law *— Acquisition of land — Objection against award — Landowner accepted offer of compensation without protest — Whether objection may be validly made against award*

The applicant's land was acquired by the Collector of Land Revenue ('the collector') in accordance with s 8 of the Land Acquisition Act 1960 ('the Act'). Form H (which is the notice of award and offer of compensation) dated 9 December 1994 was received by him. The award was paid to Kwong Yik Bank Bhd who held a charge on the land. The applicant said that he was unable to raise the deposit in order to file an appeal by way of Form N (as provided for by s 38(1) of the Act) as he is a labourer earning RM600 per month. He further claimed that he had just realized that he may apply to court for an enlargement of time to refer his claim to court and object to the award made by the collector. He also said that he is illiterate and was unaware of his rights. Hence the applicant prayed for an order that he be granted an enlargement of time to object to the award made by the collector.

Held, dismissing the application:

(1) The right to make an objection is provided for in s 37 of the Act and the conditions provided for in the section must be complied with before a landowner becomes entitled to make an objection (see pp 581B–583B); *Hamidon bin Ahmad v Collector of Land Revenue, Jasin* [1970] 1 MLJ 202 and *Semantan Estate (1952) Ltd v Collector of Land Revenue* [1960] MLJ 300 followed.

(2) Section 30(b) of the Act which is mandatory in nature and which goes to the root of a person's entitlement to make an objection to the award, provides that any person who has received any payment of any amount awarded otherwise than under protest shall not be entitled to require that his claim be referred to the court. It is therefore clear that once payment had been accepted otherwise than under protest, the prohibition in s 30(b) of the Act will be activated and such a landowner will not be entitled to change his mind and require that his claim be referred to the court under

s 38 of the Act. The rationale behind s 30(b) of the Act is that once a person had received an award without protest, he is estopped from protesting later based on the doctrine of election (see pp 584E–585C); *Ng Kam Loon & Ors v Director of Public Works Department, Johore & Anor* [1990] 2 MLJ 229 and *Ee Kim Kin v The Collector of Land Revenue, Alor Gajah* [1967] 2 MLJ 89 followed.

(3) If a landowner wishes to accept an award under protest, he must formally inform the collector of his intention to do. He is required to fill up the schedule to Form H which is the notice of award and offer of compensation, and return it to the collector (see p 585F).

(4) As payment had been made by the collector in accordance with Form H which was sent to the applicant, his right to make an objection became extinguished as he did not make a protest before the sum was received, nor did he make an objection against the award before receipt of the sum (see p 586F).

(5) Since the right to protest had been extinguished, the question of enlargement of time to exercise that right did not arise (see p 586F).

Per curiam:

The schedule to Form H ought to contain a line to indicate acceptance of an award under protest. In the absence of such a line, a landowner may be led to believe that the only options available to him is either to accept or refuse the offer of award made. On the other hand s 30(b) of the Act spells out in unmistakable terms the position of a landowner who receives the award without protest. In the absence therefore of a direct notification by a landowner to the collector of his intention to receive an award under protest, a landowner's objection made in Form N as provided for by s 38(1) of the Act within the time stipulated in s 38(3) and before the award has actually been received is sufficient notice to the collector that the landowner is accepting the award under protest (see pp 585I–586A).

[Bahasa Malaysia summary

Tanah pemohon telah diambil oleh Pemungut Hasil Tanah ('pemungut tersebut') menurut s 8 Akta Pengambilan Tanah 1960 ('Akta tersebut'). Borang H (notis award and tawaran pampasan) bertarikh 9 Disember 1994 telah diterima oleh perayu. Award telah dibayar kepada Kwong Yik Bank Bhd yang memegang gadaian atas tanah itu. Pemohon telah mengatakan bahawa dia tidak berupaya untuk mendapatkan deposit untuk merayu melalui Borang N (yang diperuntukkan oleh s 38(1) Akta tersebut) kerana dia adalah seorang buruh yang berpendapatan sebanyak RM600 setiap bulan. Selanjutnya, pemohon telah menyatakan bahawa dia baru menyedari bahawa dia boleh memohon kepada mahkamah untuk suatu lanjutan masa untuk merujuk tuntutannya kepada mahkamah dan untuk

membantah terhadap award yang dibuat oleh pemungut. Dia juga telah menyatakan bahawa dia tidak tahu membaca dan bahawa dia tidak mengetahui akan haknya. Maka pemohon telah memohon untuk perintah supaya dia diberi lanjutan masa untuk membantah terhadap award yang dibuat oleh pemungut tersebut.

Diputuskan, menolak permohonan tersebut:

(1) Hak untuk membuat bantahan adalah diperuntukkan dalam s 37 Akta tersebut dan syarat-syarat yang diperuntukkan dalam seksyen tersebut mesti dipatuhi sebelum tuan tanah berhak membuat sebarang bantahan (lihat ms 581B–583B); *Hamidon bin Ahmad v Collector of Land Revenue, Jasin* [1970] 1 MLJ 202 dan *Semantan Estate (1952) Ltd v Collector of Land Revenue* [1960] MLJ 300 diikut.

(2) Seksyen 30(b) Akta tersebut yang mandatori dan yang merupakan asas hak seseorang untuk membuat bantahan kepada ganti rugi tersebut memperuntukkan bahawa sesiapa yang telah menerima bayaran mana-mana jumlah yang telah diawardkan melainkan atas bantahan, tidak akan berhak meminta supaya tuntutannya dirujuk kepada mahkamah. Maka adalah jelas bahawa sebaik sahaja bayaran diterima melainkan atas bantahan, larangan dalam s 30(b) Akta tersebut akan beroperasi dan tuan tanah tersebut tidak akan berhak menukar fikirannya dan meminta supaya tuntu nnya dirujuk di bawah s 38 Akta tersebut. Rasional s 30(b) Akta tersebut adalah sebaik sahaja seseorang itu telah menerima suatu award tanpa bantahan, dia adalah diestopkan dari membuat bantahan selanjutnya berdasarkan doktrin pemilihan (lihat ms 584E–585C); *Ng Kam Loon & Ors v Director of Public Works Department, Johore & Anor* [1990] 2 MLJ 229 dan *Ee Kim Kin v The Collector of Land Revenue, Alor Gajah* [1967] 2 MLJ 89 diikut.

(3) Jikalau seseorang tuan tanah ingin menerima award atas bantahan, dia mesti memberitahu pemungut tersebut secara formal akan niatnya untuk berbuat demikian. Dia perlu mengisi jadual kepada Borang H yang merupakan notis award and tawaran pampasan, dan memulangkannya kepada pemungut tersebut (lihat ms 585F).

(4) Oleh kerana bayaran telah dibuat oleh pemungut tersebut menurut Borang H yang telah dihantar kepada perayu, hak perayu untuk membuat bantahan telah lenyap kerana dia tidak membuat bantahan sebelum bayaran diterima, ataupun membuat bantahan terhadap award tersebut sebelum penerimaan jumlah tersebut (lihat ms 586F).

(5) Oleh kerana hak untuk membantah telah lenyap, soal lanjutan masa untuk menggunakan hak tersebut tidak timbul (lihat ms 586F).

Per curiam:

Jadual kepada Borang H patut mengandungi ruang untuk menunjukkan penerimaan award tersebut atas bantahan. Ketiadaan ruang tersebut mungkin akan menyebabkan seorang tuan tanah untuk mempercayai bahawa pilihan yang wujud untuknya adalah hanya untuk menerima atau menolak tawaran tersebut. Padahal s 30(b) Akta tersebut telah memperuntukkan dengan jelasnya kedudukan tuan tanah yang menerima award tanpa bantahan. Maka, tanpa notifikasi terus oleh tuan tanah kepada pemungut tersebut akan niat untuk menerima award atas bantahan, bantahan tuan tanah yang dibuat dalam Borang N seperti yang diperuntukkan dalam s 38(1) Akta tersebut dalam tempoh masa yang diperuntukkan dalam s 38(3) dan sebelum award tersebut telah diterima sebenarnya adalah notis yang mencukupi kepada pemungut tersebut bahawa tuan tanah menerima award tersebut atas bantahan (lihat ms 585I–586A).]

Notes

For a case on enlargement of time to object against an award, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue), para 1303.

For a case on objection against an award, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue), para 1219.

Cases referred to

Ee Kim Kin v The Collector of Land Revenue, Alor Gajah [1967] 2 MLJ 89
Hamidon bin Ahmad v Collector of Land Revenue, Jasin [1970] 1 MLJ 202
Land Acquisition Act, Re, Government v Nanu Kothare & Ors ILR 30 Bom 275
Ng Kam Loon & Ors v Director of Public Works Department, Johore & Anor [1990] 2 MLJ 229
Nusserwanjee Pestonjee v Meer Mynoodeen Khan Wulled Meer Subroodeen Khan Bahadoor (1855) 6 IA 134
Semantan Estate (1952) Ltd v Collector of Land Revenue [1960] MLJ 300

Legislation referred to

Land Acquisition Act 1960 ss 29(1), 30, 37, 38
Land Acquisition Enactment (Cap 140) s 22

K Kesavan (*Kesavan & Associates*) for the appellant.
Abdul Rahman Putra (State Legal Adviser) for the respondent.

Augustine Paul JC: By originating summons dated 15 May 1996 the plaintiff prayed for an order that he be granted an enlargement of time to object to the award made by the Collector of Land Revenue ('the collector'), district of Melaka Tengah under the Land Acquisition Act 1960 ('the Act') in respect of the acquisition of lot nos 739 and 1532, Mukim Balai Panjang, Daerah Melaka Tengah, Melaka of which he was the registered

A proprietor. I shall first cogitate over the applicable law before making a ruling on the application.

The Act makes provision to enable a landowner to object to an award made in his favour upon the acquisition of his land. The right to make an objection is given by s 37 of the Act, the material parts of which read as
B follows:

37(1) Any person interested in any scheduled land who, pursuant to any notice under ss 10 or 11, has made a claim to the land administrator in due time and who has not accepted the land administrator's award thereon, or has accepted payment of the amount of such
C award under protest as to the sufficiency thereof, may, subject to this section, make objection to:

(a) the measurement of the land;

(b) the amount of the compensation;

(c) the persons to whom it is payable;

(d) the apportionment of the compensation.
D

(2) Where the total amount claimed in compensation in respect of any interest in any scheduled land does not exceed three thousand ringgit the written award of the land administrator shall be final with regard to both the measurement of the land and the amount of compensation awarded, and no objection may be made under
E sub-s(1) in respect thereof.

(3) Where the total amount of any award in respect of any scheduled land exceeds RM15,000, any government or any person or corporation undertaking a work which in the opinion of the state authority is of public utility, and on whose behalf such land was acquired pursuant to s 3, shall be deemed to be a person interested
F in any scheduled land under sub-s (1), and may make objections on any of the grounds specified in sub-s (1).

The manner of making an objection to the compensation awarded is governed by s 38 of the Act the material parts of which read as follows:

38(1) Any objection made under s 37 shall be made by a written application
G in Form N to the land administrator requiring that he refer the matter to the court for its determination, and a copy thereof shall be forwarded by the land administrator to the registrar of the court.

(2) Every application under sub-s (1) shall state fully the grounds on which objection to the award is taken, and at any hearing in court no
H other grounds shall be given in argument, without leave of the court.

(3) Every application under sub-s (1) shall be made:

(a) if the person making it was present or represented before the land administrator at the time when the land administrator made his award, within six weeks from the date of the land administrator's award under s 14;
I

(b) in other cases, within six weeks of the receipt of the notice from the land administrator under s 16 or within six months from the date of the land administrator's award under s 14 whichever period shall first expire.

(4) The period of six weeks prescribed by sub-s (3)(a) and the periods of six weeks and six months prescribed by sub-s (3)(b) shall not be capable of enlargement by any court, except in such special circumstances as the court may think fit.

(5) ...

(6) ...

(7) ...

The opening words of s 37(1) prescribe certain conditions to be observed before an affected person can make an objection. This was neatly summarized by Sharma J in *Hamidon bin Ahmad v Collector of Land Revenue, Jasin* [1970] 1 MLJ 202 in the following terms at p 204:

> If an absurdity and an obvious injustice is to be avoided and a fair interpretation put on s 37(1) of the Act, then it means that the following three categories of persons can make an objection:
>
> (a) A person who has made a claim to the collector as a result of the notice.
>
> (b) A person who has not accepted the collector's award — such a person could be a person who had made a claim or who had not made a claim.
>
> (c) A person who has accepted the award under protest.

A matter of serious concern is whether the conditions specified in s 37(1) of the Act must be complied with before a landowner becomes entitled to make an objection. A similar issue arose for consideration in *Semantan Estate (1952) Ltd v Collector of Land Revenue* [1960] MLJ 300 with regard to s 22 of the Land Acquisition Enactment (Cap 140) which reads as follows:

22 (i) If the total of the amount claimed for compensation under the provisions of s 9(ii) exceeds RM500, any person interested who has not accepted the award or any person paying the cost of acquisition may, by written application to the collector, require that the matter be referred by the collector for the determination of the court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(ii) The application shall state fully the grounds on which objection to the award is taken and at the hearing no other grounds shall be given in argument without leave of the court.

(iii) Every such application shall be made:

(a) if the person making it was present or represented before the collector at the time when he made his award, within six weeks from the date of the collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the collector under s 12(ii) or within six months from the date of the collector's award, whichever period shall first expire.

(iv) The period of six weeks prescribed by sub-s (iii)(a) and the periods of six weeks and six months prescribed by sub-s (iii)(b) shall only be capable of enlargement by order of a court in special circumstances.

(v) (a) Before making reference to the court the collector may require each applicant for reference to deposit such sum not exceeding one thousand dollars, or the amount of the collector's award whichever is the less, as he may consider reasonable as security for the costs of reference and appeal.

(b) In the event of such deposit not being made within 14 days the application for reference shall be deemed to have been withdrawn and the collector's award shall thereupon become final.

In ruling on the effect of the conditions in the section, one of which states that the person interested must not have accepted the award, Ong J (as he then was) referred to the decision of the Judicial Committee of the Privy Council in *Nusserwanjee Pestonjee v Meer Mynoodeen Khan Wulled Meer Subroodeen Khan Bahadoor* (1855) 6 IA 134 where it was held at p 155:

> Wherever jurisdiction is given to a court by an Act of Parliament, or by a regulation in India (which has the same effect as an Act of Parliament), and such jurisdiction is only given upon certain specified terms contained in the regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise.

His Lordship also referred to *Re Land Acquisition Act, Government v Nanu Kothare & Ors* ILR 30 Bom 275 where Chandavakar J said at p 285:

> These are the conditions prescribed by the Act for the right of the party to a reference by the collector to come into existence. They are the conditions to which the power of the collector to make the reference is subject. They are also the conditions which must be fulfilled before the court can have jurisdiction to entertain the reference.

Ong J (as he then was) in *Semantan Estate (1952) Ltd v Collector of Land Revenue* [1960] MLJ 300 then pronounced his conclusion at p 301 in this way:

> The conditions prescribed by s 22 must be complied with before the collector can make the reference and the court have jurisdiction to act on it.

Section 22 of the Land Acquisition Enactment is a combination of ss 37 and 38 of the Act although the conditions in the latter are wider. The enunciation of the law by Ong J (as he then was) applies with equal force to the conditions prescribed by the Act. The corollary is that a landowner must first comply with the conditions in s 37(1) before he can make an objection as authorized by s 38. Failure to comply with the conditions would mean that the collector would not be able to refer the objection to the court and, even if he does, the court will not have jurisdiction to entertain it. I interpolate to refer to s 29 of the Act which reads as follows:

29(1) After a notice of award in Form H has been served in the manner prescribed by s 53 upon all interested persons the land administrator shall, as soon as may be, make payment of each amount awarded to the person entitled thereto unless:

(a) there shall be no person competent to receive such payment;

(b) the person entitled thereto does not consent to receive the amount awarded; or

(c) there is a dispute as to the right or title of the person to receive the compensation or as to the apportionment thereof.

(2) In the cases referred to in sub-s (1)(a), (b) and (c) the land administrator shall apply ex parte to the registrar of the court in chambers, supported by affidavit, for an order to deposit the amount awarded into court and, notwithstanding anything to the contrary in the law for the time being in force relating to civil procedure, the registrar shall have power to make such order.

This section requires the collector to make payment of the award to the landowner concerned except in those cases falling within clauses (a), (b) and (c) of sub-s (1) of the section where the money will be paid into court. The section, however, makes no reference to a person who has received payment under protest as provided by s 37(1) of the Act. This does not in any way mean that this condition can be ignored. It has to be complied with in view of the fact that s 30 of the Act states in crystalline terms that:

30 Notwithstanding anything contained in s 29:

(a) any interested person may receive a payment of the amount awarded under protest as to the sufficiency of such amount;

(b) any person who has received any payment of any amount awarded otherwise than under protest shall not be entitled to require that his claim be referred to the court under s 37.

Section 30(b) of the Act is mandatory in nature and goes to the root of a person's entitlement to make an objection to an award. In commenting on this subsection, Richard Talalla JC (as he then was) said in *Ng Kam Loon & Ors v Director of Public Works Department, Johore & Anor* [1990] 2 MLJ 229 at p 231:

> It is true that the plaintiffs having received payment of ... the amount awarded otherwise than under protest are not entitled to require their claim to be referred to the court under s 37. I see nothing wrong with that. It simply means that they having accepted the collector's offer of compensation cannot now retract by going to the court and claiming more.

I have ascertained that the appeal in the case that I have just adverted to has been dismissed by the Supreme Court. It is therefore clear that once payment has been accepted otherwise than under protest, the prohibition contained in s 30(b) of the Act will then be activated and, in consequence thereof, such a landowner will not be entitled to change his mind and require that his claim be referred to the court under s 38 of the Act. In that event the question of enlargement of time to make an objection does not arise for the simple reason that the right to object does not exist. The rationale behind s 30(b) of the Act is obvious. Once a person has received an award without protest he is estopped from protesting later based on the doctrine of election. In this regard I refer to *Ee Kim Kin v The Collector of Land Revenue, Alor Gajah* [1967] 2 MLJ 89 where Ismail Khan J (as he then was) said at p 91:

A ... I do not think that the applicant should be allowed to blow hot and cold. He who had accepted compensation pursuant to an award is estopped from saying it was not an award. See judgment of Scrutton LJ in *Verschures Creameries Ltd v Hull & Netherlands Steamship Co Ltd* [1921] 2 KB 608, 611 which reads:

> 'A plaintiff is not permitted to "approbate and reprobate". The phrase B is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument. ... The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and C then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction.'

Thus the authorization by the Act to allow a landowner to accept an award under protest is to enable him to preserve his right to make an objection to the award made by the collector which, otherwise, would be extinguished D upon receipt of the award. This is in line with the meaning of the word 'protest' as defined in *Black's Law Dictionary* (6th Ed) as follows:

> A formal declaration made by a person interested or concerned in some act about to be done, or already performed, whereby he expresses his dissent or disapproval, or affirms the act against his will. The object of such a declaration E is generally to save some right which would be lost to him if his implied assent could be made out, or to exonerate himself from some responsibility which would attach to him unless he expressly negatived his assent.

I shall now consider the manner of accepting an award under protest. If a landowner wishes to accept an award under protest then he must formally inform the collector of his intention to do so. However, the schedule to F Form H which is sent to the landowner by the collector may cause some confusion. Form H is the notice of award and offer of compensation and it gives certain instructions to the landowner. He is required to fill up the schedule and return it to the collector. The schedule to Form H (the English version as provided in the Act) reads as follows:

G I, the undersigned ... hereby acknowledge receipt of the above offer.

2. I am prepared to attend the land office on any appointed day to receive payment in cash.

I request that the amount due be sent to me by cheque/money order at the above address.

H I do not accept the above offer.

Dated this ... day of ... 19 ...

... .

It will be observed that the schedule makes no mention of the right to I accept the award under protest although there is a specific line for refusal to accept the offer. In my opinion the schedule ought to contain a line to indicate the acceptance of the award under protest. In the absence of such a line a landowner may be led to believe that the only options available to him are those contained in the schedule. On the other hand, s 30(b) of the

Act spells out in unmistakable terms the position of a landowner who receives the award without protest. In the circumstances, it is my view that in the absence of a direct notification by a landowner to the collector of his intention to receive an award under protest, a landowner's objection made in Form N, as provided for by s 38(1) of the Act, within the time stipulated in s 38(3) and before the award has actually been received, is sufficient notice to the collector that the landowner is accepting the award under protest. After all, a request for an objection in Form N followed by an acceptance of the award indicates dissatisfaction with the award and thereby amounts to an acceptance of the award under protest. This accords with the objective of doing something under 'protest' as defined in *Black's Law Dictionary* (6th Ed) which says in substance that the object of making a protest is generally to save some right which would otherwise be lost. An objection to the award made before receiving it in Form N has just that effect.

In the application before me the facts leading to the prayer by the applicant are set out in the affidavit accompanying the originating summons. The applicant affirmed that his land was acquired by the collector in accordance with s 8 of the Act. Form H dated 9 December 1994 was received by him. The award was paid to Kwong Yik Bank Bhd to which he had charged the land. He said that he was unable to raise the RM1,500 to be paid as deposit in order to file Form N as he is a labourer earning RM600 per month. He said that he had just realized that he may apply to the court for an enlargement of time to require his claim to be referred to the court. He also said that he is illiterate and was not aware of his rights.

As the payment had been made by the collector in accordance with Form H which was sent to the applicant, his right to make an objection became extinguished as he did not make a protest before the sum was received, nor did he make an objection against the award before receipt of the sum. Since the right had been extinguished, the question of enlargement of time to exercise that right does not arise. This ground alone is sufficient to dismiss the application. It is therefore unnecessary for me to consider whether there are special circumstances to enlarge the time to make the protest. Notwithstanding what I have said, it is my view that the fact that the applicant was prevented from making an objection due to lack of funds does not qualify as a special circumstance on the facts of this case. That the applicant who has charged his property for more than RM3m is unable to raise a mere RM1,500 is hard to accept. Accordingly, I dismissed the application.

Application dismissed.

Reported by Lew Chee Seong